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WAL-MART STORES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR INDEPENDENT LIVING,
INC., JANET BROWN, and LISA
KILGORE on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

WAL-MART STORES, INC.,

Defendant.

GEORGE PARTIDA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

Lead Case No. C 12-3885 CRB

**STIPULATION FOR ADDITIONAL STAY
WHILE PURSUING RESOLUTION AND
ORDER THEREON**

Judge: Hon. Charles R. Breyer

Consolidated Case No. C 13-00305 CRB

1 Plaintiffs Center for Independent Living, Inc., Janet Brown, and Lisa Kilgore
2 (collectively, the “CIL Plaintiffs”), on the one hand, and Defendant Wal-Mart Stores, Inc. (“Wal-
3 Mart” or the “Company”), on the other hand, enter into this Stipulation For Additional Stay While
4 Pursuing Resolution with reference to the following facts:

5 **RECITALS**

6 A. On April 3, 2013, this Court ordered the two cases – *Partida v. Wal-Mart Stores,*
7 *Inc. and Center for Independent Living, Inc., et al. v. Wal-Mart Stores, Inc.* – consolidated for all
8 purposes. (*Docket No. 28.*) The Court also granted the motion brought by counsel for the CIL
9 Plaintiffs to be appointed interim class counsel pursuant to Federal Rule of Civil Procedure 23(g).
10 (*Docket No. 27.*) In the order appointing interim class counsel, this Court gave counsel for the
11 CIL Plaintiffs the authority to “[e]nter[] into stipulations, with opposing counsel, necessary for
12 the conduct of the litigation” and designate “which attorneys may appear at settlement
13 negotiations on behalf of the putative class and conducting settlement negotiations with
14 defendant” on behalf of the CIL Plaintiffs and plaintiff Partida. (*Id.*)

15 B. On April 25, 2013, to accommodate the parties’ mediation schedule, this Court
16 agreed to modify its prior November 2012 order by continuing the deadline for the parties to
17 attend mediation to June 7, 2013 and to report on the results of the mediation to June 14, 2013.
18 (*Docket No. 30.*)

19 C. On June 7, 2013, the parties attended a full day of mediation before mediator
20 David Rotman in San Francisco, California. The mediation was fruitful and the parties made
21 significant progress toward resolution. To further efforts at resolution, the parties agreed to
22 consider and evaluate detachable Point of Sale (“POS”) devices that could be tethered to the front
23 end checkstands at a height more readily accessible to Plaintiffs, and which comply with all
24 industry guidelines and are acceptable to Wal-Mart. The parties also agreed to stay litigation and
25 focus their actions on addressing the contingencies and conditions to facilitate a settlement in this
26 case.

27 D. Since the parties’ mediation in June 2013, and consistent with the parties’
28 continuing settlement negotiations and stipulations, this Court has granted several requests to stay

1 this litigation, including continuing and then vacating the Case Management Conference during
2 the stay. (*Docket Nos. 32, 34, 36, 38, 40.*) This ongoing stay has allowed the parties to make
3 significant progress toward a resolution of this matter and to explore options related to POS
4 mounting devices that are agreeable to all parties. For the Court's convenience, we detail below
5 some of the efforts and progress made during the stay.

6 E. Beginning immediately after the mediation in June 2013, the parties
7 communicated consistently with each other, their clients, and several third-party vendors in an
8 effort to find a POS device mount that satisfied the parties' concerns with, among other things,
9 accessibility and security. Those efforts included the evaluation of commercially available POS
10 mounts that were attached to checkstands and other mounting options that utilize a swinging arm
11 that could be positioned at a height more readily accessible to Plaintiffs. Unable to find a
12 commercially available mount that satisfied all of the parties' concerns, Wal-Mart worked with a
13 third party through the end of 2013 to create a novel POS device mount design and fabricating a
14 working prototype.

15 F. In Spring 2014, the parties held two in-person inspections of the new POS device
16 mount prototype for Plaintiffs near their residences. During the first inspection, on April 2, 2014,
17 Plaintiffs were present with their attorneys and a disability access expert. Plaintiffs expressed that
18 the POS mount prototype was a significant improvement over prior or alternative mounts and
19 provided much better access to mobility impaired customers. Following the inspection, Plaintiffs
20 suggested some minor changes to the mount prototype. On May 8, 2014, the parties attended a
21 follow-up inspection of the updated POS mount prototype at a second Wal-Mart store. Plaintiffs
22 again expressed their general acceptance and approval of the POS mount prototype with some
23 suggested modifications.

24 G. Throughout the Summer of 2014, the parties worked toward resolution. For
25 example, Wal-Mart confirmed that the POS mount prototype meets data protection, security, and
26 other standards required by the Payment Card Industry. The parties also discussed and agreed on
27 the protocol that would be followed to evaluate the usability of the POS mount prototype, which
28 included beta testing the device in select Wal-Mart stores for a period of approximately 60 days.

1 To that end, Wal-Mart began the process of securing the production of approximately 50 POS
2 mount prototypes for installation at front end checkstands in the Wal-Mart stores where the beta
3 test would be conducted.

4 H. On September 4, 2014, this Court granted the parties' stipulation and extended the
5 stay of litigation through December 12, 2014 so the parties could continue exploring resolution
6 options (the "September 2014 Order"). (*Docket No. 42.*) In addition, the Court: (a) confirmed
7 the parties' stipulation that all communications between the parties shall be confidential,
8 privileged, and protected by Rule 408 of the Federal Rules of Evidence; (b) ordered the parties to
9 file a joint status report on or before December 5, 2014; and (c) vacated the Case Management
10 Conference. (*Id.*)

11 I. Since the September 2014 Order, the parties worked diligently toward beta testing
12 the POS mount prototype. As detailed by the parties in the September 2014 Stipulation and
13 Order, the first step in the beta testing process was internal testing of the POS mount prototype by
14 Consumer Testing Laboratory ("CTL"), which testing is required before Wal-Mart can roll out a
15 product or device of this kind on a large scale.

16 J. Unfortunately, the process stopped at the CTL testing phase. That's because,
17 while the POS mount prototype passed many tests, it failed several key tests, which illustrated
18 that the device could not withstand significant and extended usage that is typical in a Wal-Mart
19 store. Wal-Mart communicated the test failures to Plaintiffs as well as the fact that, based on
20 those test failures, Wal-Mart could not move forward with the then-current design concept or the
21 beta testing as proposed in the September 2014 Order.

22 K. Despite these setbacks, Wal-Mart has continued its efforts to create a POS
23 mounting device. In particular, Wal-Mart engaged another contractor who specializes in
24 designing hinges and with significant effort, that contractor created the designs for an alternative
25 POS mounting prototype. In furtherance of its efforts, at this stage in the process, Wal-Mart's
26 contractors have drafted mock-up design drawings showing the new, alternative POS mounting
27 prototype, as well as the proposed modifications to address the design failures in the first
28 prototype. Wal-Mart anticipates sharing these drawings with Plaintiffs after the parties executed

1 a stipulated protective order. Based on preliminary discussions, the parties believe they can
2 continue to move forward with this new, alternative POS mounting prototype.

3 L. The parties are committed to moving forward with the full testing of the alternative
4 POS mounting prototype. In this regard, the parties believe that the following steps should take
5 place:

6 (1) Once Plaintiffs have an opportunity to comment on the design drawings, Wal-Mart
7 anticipates that it will fabricate working prototypes for final approval by CTL. At this
8 juncture, Wal-Mart cannot provide a date certain on which the fabrication for the
9 prototypes will be ready for testing because the timing of such production is in the hands
10 of two separate third-party contractors. That said, based on the information supplied to
11 Wal-Mart by its contractors, the Company estimates that the initial prototypes will be
12 fabricated between late December 2014 and late January 2015.

13 (2) Assuming that the new prototype passes CTL testing, Wal-Mart has committed to
14 installing the new prototype for Plaintiffs and their counsel to inspect at a Wal-Mart store
15 in Northern California. For the reasons identified above, Wal-Mart cannot commit to a
16 date certain for the installation or inspection at this time. However, based on estimates
17 provided to the Company by its contractors, Wal-Mart anticipates that the prototype will
18 be ready to be installed and inspected by Plaintiffs in the first quarter of 2015.

19 (3) If the inspection is successful and leads to consensus by Plaintiffs, Wal-Mart will
20 select several stores in which to conduct a 60-day beta testing of the new POS mount
21 prototype. Wal-Mart cannot provide a date certain on which the beta testing will
22 commence because it cannot control the fabrication process or the length of time it will
23 take to fabricate the necessary number of prototypes for the beta test. However, once the
24 steps outlined above are completed, Wal-Mart anticipates that it will be in a better position
25 to obtain that information from its contractors.

26 M. As shown above, the parties are committed to moving this matter forward toward
27 resolution and hope to resolve the matter without the need for further formal discovery, motion
28 practice or trial. In furtherance of this goal, the parties are committed to exchange proposals for

1 resolving the remaining class issues in the case during the preparation and roll-out periods of the
 2 beta testing program. Accordingly, at this juncture, the parties request an additional 90-day stay
 3 in this matter so that they can focus their efforts on continuing to explore avenues for settlement,
 4 including the evaluation of the new POS mounting prototype and the remaining settlement issues.
 5 The parties do not anticipate that final approval and beta testing of the new POS mount prototype
 6 will be completed in this 90-day window, but have agreed that it is in all parties' interests to
 7 continue to update the Court on the good progress they are making. The parties agree to submit a
 8 formal joint report at the end of any approved stay to apprise the Court of the status of the parties'
 9 efforts to resolve the matter.

10 N. For the reasons outlined above, the parties submit that good cause exists to
 11 continue the stay in this case for approximately 90 days, keep off calendar the Case Management
 12 Conference and related date to submit a Case Management Conference Report, and set a date for
 13 a formal report on the parties' progress toward resolution on or around March 13, 2015.

14 **STIPULATION**

15 Based on the facts stated above and subject to this Court's approval, the parties stipulate
 16 as follows:

- 17 1. The parties shall file with this Court on or before **March 13, 2015** a joint report
 18 apprising the Court of the status of the parties' further settlement discussions, as well
 19 as any additional efforts to resolve the case during the stay.
- 20 2. This action (meaning the consolidated cases of *Center for Independent Living v. Wal-*
 21 *Mart Stores, Inc.* and *Partida v. Wal-Mart Stores, Inc.*), including all discovery and
 22 motion practice, shall be stayed until **March 20, 2015**.
- 23 3. Any and all communications by and between the parties, their attorneys and the
 24 mediator regarding or related to resolution and potential use of POS devices and POS
 25 device mounts shall be confidential, privileged, and protected by Rule 408 of the
 26 Federal Rules of Evidence.
- 27 4. The Case Management Conference shall remain off calendar, and shall be re-set by
 28 order of the Court following the parties' March 13, 2015 joint report on the status of

1 settlement efforts.

2 **IT IS SO STIPULATED.**

3 Dated: December 5, 2014.

Jones Day

4 By: /s/ Steven M. Zdravetz

5 Steven M. Zdravetz

6 Counsel for Defendant

WAL-MART STORES, INC.

7 Dated: December 5, 2014.

Disability Rights Advocates

8 By: /s/ Larry Paradis

9 Larry Paradis

10 Interim Class Counsel

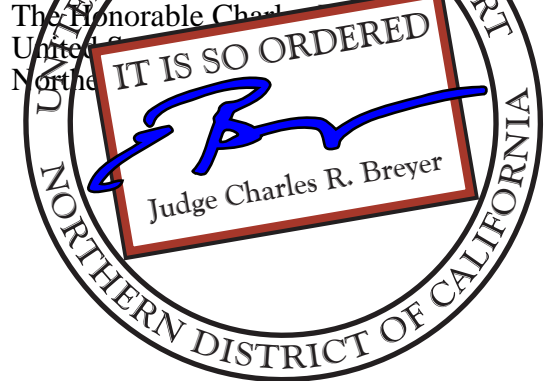
ORDER

The Court has read and considered the parties' Stipulation For Additional Stay While Pursuing Resolution and finds that good cause exists to grant the relief requested.

IT IS SO ORDERED.

Dated: December 15, 2014.

By: _____



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